

Missouri

# SEARCH WARRANT GUIDE

ANTHONY BANDIERO, ESQ.

*Fourth Amendment*  
*the people to be secure in*  
*houses, papers, and effects against*  
*unreasonable searches and seizures, shall not*  
*be*  
*and no Warrants*

# Missouri Search Warrant Guide

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A REFERENCE FOR LAW ENFORCEMENT



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— Anthony Bandiero

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## PART I

### Common Search Warrant Questions

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#### Application Procedure

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1) Who may apply?	Any peace officer or prosecuting attorney (§ 542.276) or assistant prosecuting attorney (Mo. Local. Ct. R. 32.7)  Obscene matter: any police officer, sheriff, or deputy sheriff (§ 542.281)
2) Who has the authority to issue?	Any appellate judge or any judge of a court of original criminal jurisdiction (§§ 542.266(2); 542.281(2))
3) Is an affidavit necessary?	Application may be supplemented with affidavit (§ 542.276(3))
4) Can sworn oral testimony replace an affidavit?	Not considered (§ 542.276(3)); may be considered regarding warrant for obscene or pornographic matter (§ 542.281(2))
5) Are there special provisions for obtaining a warrant by telephone?	Yes, may be submitted by facsimile or other electronic means (§ 542.276(3))

Application or execution of warrant may be based upon electronic signature of officer, prosecutor, or judge (§ 542.276(11))

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6) What property can be seized?

- Evidence of a crime
- Stolen or unlawfully acquired
- Property subject to public service commission regulation if not removed following written notice that such property is being used in a crime
- Property the possession of which is unlawful
- Seizure authorized by statute
- Anything used as raw material to produce anything the possession of which is unlawful
- Any kidnapped person
- Any person for whom there is an outstanding felony arrest warrant
- Any deceased human fetus or corpse or part thereof
- Obscene materials
- Matter that is pornographic for minors
- Anything used as raw

material to publish obscene materials

(§§ 542.271(1)–542.271(4), 542.281(1))

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7) Contents of application

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a) Who or what is to be searched?

Yes (§§ 542.276(2)(4); 542.281(1)(3))

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b) State the items being sought?

Yes (§§ 542.276(2)(3); 542.281(1)(3))

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c) State the basis for probable cause?

Yes (§ 542.276(2)(5))

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d) Are there additional requirements?

Oath or affirmation of the applicant (§ 542.276(2)(6))

Time and date of application (§ 542.276(2)(2))

Signature of the prosecuting attorney of the county where the search is to take place, or designated assistant (§ 542.276(2)(8))

Forms for complaint for warrant for stolen property (Mo. R. Crim. P. Forms 37&38)

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**The Search Warrant**

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1) Does it require a standard format?

Yes, authorizing search for stolen property (Mo. R. Crim. P. Forms 39A & 39B)

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2) Required contents

—Time of issuance

—Date of issuance

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- Person/place to be searched
  - Property to be seized
  - Execution directions
  - Title of office and signature of issuing judge
  - Must be in the name of state of Missouri
- (§ 542.276(6))

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### Execution of Search Warrant

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1) How soon must search warrant be executed?	As soon as is practicable and within 10 days of date of application (§ 542.276(8))
2) Who may execute?	Any peace officer and any person he summons to assist (§§ 542.276(7), 542.291(3))
3) Where is the search warrant applicable?	Within the territorial jurisdiction of the issuing court and executing officer unless the person or thing to be searched moved or was taken out of that jurisdiction after the application for warrant was filed (§ 542.286)
4) When may warrant be executed?	
a) Is execution limited during daytime?	Yes (§ 542.291(1))
b) Is execution limited during nighttime?	Yes. If daytime execution is not practicable (§ 542.291(1))



## **PART II**

### **V.A.M.S. 542.261 Peace officer defined**

As used in sections 542.261 to 542.296 and section 542.301, the term “peace officer” means a police officer or<sup>1</sup> member of the highway patrol to the extent otherwise permitted by law to conduct searches, sheriff or deputy sheriff.

**V.A.M.S. 542.266**

**Search warrant defined--who may issue**

1. A search warrant is a written order of a court commanding the search of a person, place, or thing and the seizure, or photographing or copying, of property found thereon or therein.
2. A search warrant may be issued by an appellate judge or by any judge of a court having original jurisdiction of criminal offenses within the territorial jurisdiction where the person, place, or movable or immovable thing to be searched is located at the time of the making of the application.

**V.A.M.S. 542.271**

**Warrant may issue to search and seize, certain persons and items, or to copy, photograph or record**

1. A warrant may be issued to search for and seize, or photograph, copy or record any of the following:

(1) Property, article, material, or substance that constitutes evidence of the commission of a criminal offense; or

(2) Property which has been stolen or acquired in any other manner declared an offense by chapters 569 and 570; or

(3) Property owned by any person furnishing public communications services to the general public subject to the regulations of the public service commission if such person has failed to remove the property within a reasonable time after receipt of a written notice from a peace officer stating that such property is being used as an instrumentality in the commission of an offense; or

(4) Property for which possession is an offense under the law of this state; or

(5) Property for which seizure is authorized or directed by any statute of this state; or

(6) Property which has been used by the owner or used with his acquiescence or consent as a raw material or as an instrument to manufacture or produce any thing for which possession is an offense under the laws of this state.

2. A warrant may be issued to search for and rescue a kidnapped person.

3. A warrant may be issued to search for any person for whom a valid felony arrest warrant is outstanding.
4. A warrant may be issued to search for and seize any deceased human fetus or corpse, or part thereof.
5. The provisions of sections 542.261 to 542.296 and section 542.301 shall prevail over any rules and regulations promulgated by any state governmental agency, commission or board, to the contrary notwithstanding.



### ABOUT THE AUTHOR

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Anthony is an attorney and retired law enforcement officer with experience as both a municipal police officer and sergeant with a state police agency. Anthony has studied constitutional law for over twenty years and has trained countless police officers around the nation in search and seizure.

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# Missouri SEARCH WARRANT GUIDE

This booklet is a straightforward and essential resource for anyone involved in writing or executing search warrants in Missouri. Consolidating relevant statutes and procedural rules and offering clear answers to common questions and addressing real-world challenges.

Designed to be a quick reference, this booklet covers key topics such as warrant application, execution, and return procedures, as well as critical provisions from the Missouri Code and Missouri Rules of Criminal Procedure. Whether clarifying authority to issue warrants, addressing defects, or ensuring compliance with execution and return requirements, this guide provides the tools you need for accuracy and legal compliance.



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